

1 KAMALA D. HARRIS  
Attorney General of California  
2 MARC D. GREENBAUM  
Supervising Deputy Attorney General  
3 GILLIAN E. FRIEDMAN  
Deputy Attorney General  
4 State Bar No. 169207  
300 So. Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
Telephone: (213) 897-2564  
6 Facsimile: (213) 897-2804  
*Attorneys for Complainant*

8 **BEFORE THE**  
9 **BOARD OF REGISTERED NURSING**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2013-913

13 **NICOLE LYNN MAYS,**  
14 **AKA NICOLE LYNN BAUTISTA**  
20003 Egret Place  
15 Canyon Country, CA 91350

**ACCUSATION**

16 Registered Nurse License No. 614766

17 Respondent.

18  
19 Complainant alleges:

20 **PARTIES**

21 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her  
22 official capacity as the Executive Officer of the Board of Registered Nursing, Department of  
23 Consumer Affairs.

24 2. On or about March 3, 2003, the Board of Registered Nursing issued Registered Nurse  
25 License Number 614766 to Nicole Lynn Mays, aka Nicole Lynn Bautista (Respondent). The  
26 Registered Nurse License was in full force and effect at all times relevant to the charges brought  
27 herein and will expire on July 31, 2014, unless renewed.

28 ///

1

2

## 5

6

10

14

15

17

18

19

22

23

26

1 Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as  
2 defined in Section 4022.

3 "(b) Use any controlled substance as defined in Division 10 (commencing with Section  
4 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in  
5 Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to  
6 himself or herself, any other person, or the public or to the extent that such use impairs his or her  
7 ability to conduct with safety to the public the practice authorized by his or her license."

8 8. Section 2770.11 of the Code provides:

9 "(a) Each registered nurse who requests participation in a diversion program shall agree to  
10 cooperate with the rehabilitation program designed by the committee and approved by the  
11 program manager. Any failure to comply with the provisions of a rehabilitation program may  
12 result in termination of the registered nurse's participation in a program. The name and license  
13 number of a registered nurse who is terminated for any reason, other than successful completion,  
14 shall be reported to the board's enforcement program.

15 "(b) If the program manager determines that a registered nurse, who is denied admission  
16 into the program or terminated from the program, presents a threat to the public or his or her own  
17 health and safety, the program manager shall report the name and license number, along with a  
18 copy of all diversion records for that registered nurse, to the board's enforcement program. The  
19 board may use any of the records it receives under this subdivision in any disciplinary  
20 proceeding."

### 21 COST RECOVERY

22 9. Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
23 administrative law judge to direct a licentiate found to have committed a violation or violations of  
24 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
25 enforcement of the case.

### 26 DEFINITIONS

27 10. **Dilaudid** is a Schedule II controlled substance pursuant to Health and Safety Code  
28 section 11055(b)(1)(j) and is categorized as a dangerous drug within the meaning of Section

4022, subdivision (a). Dilaudid is an opium derivative, and the brand name for the narcotic substance Hydromorphone. It is indicated for the treatment of severe pain.

11. **Benadryl** is the trade name for the drug diphenhydramine, and in a 50 mg dosage is a dangerous drug pursuant to Business and Professions Code section 4022.

12. **Morphine** is a Schedule II controlled substance pursuant to Health and Safety Code section 11055(b)(1)(L) and a dangerous drug pursuant to Business and Professions Code section 4022.

13. **Cocaine** and any cocaine base, is a narcotic drug according to Health and Safety Code section 11019(e). It is a Schedule I controlled substance, as designated in Health and Safety Code section 11054(f)(1), and a Schedule II controlled substance, as designated in Health and Safety Code section 11055(b)(6). It is categorized as a dangerous drug according to Business and Professions Code section 4022.

14. **Tramadol** is not currently listed as a controlled substance in the Health and Safety Code; however, it is a dangerous drug pursuant to Business and Professions Code section 4022. Tramadol is used for treating moderate to moderately severe pain, restless leg syndrome, acid reflux, and fibromyositis.

#### **FIRST CAUSE FOR DISCIPLINE**

##### **(Use of Controlled Substance(s) to the Extent That Use Impairs Safety)**

15. Respondent is subject to disciplinary action under Business and Professions Code sections 2761, subdivision (a), 2762, subdivision (b), and 2770.11, on the grounds of unprofessional conduct, in that, on multiple occasions, Respondent has used controlled substances or dangerous drugs to an extent or in a manner dangerous to herself or another person or the public, or to the extent that such use impairs her ability to conduct with safety the practice authorized by her license. The circumstances are described more fully below:

a. Respondent contacted Maximus [contractor of the Board's Diversion Program] to obtain assistance with chemical dependence on March 8, 2012. On or about March 9, 2012, Respondent admitted to her employer that she had diverted IM Benadryl, Morphine, and Dilaudid waste from Providence Holy Cross, located in Mission Hills, California where she worked as a

1 charge nurse in the Emergency Room Department. Respondent admitted that she took the  
2 medication at home to offset cocaine binges.

3 b. After her clinical assessment for the Program, and a review by the Diversion  
4 Evaluation Committee (DEC), Respondent was accepted into the Board's substance abuse  
5 diversion program (Program) as a participant on May 15, 2012.

6 c. Respondent completed the outpatient program on June 14, 2012 and attended an after  
7 care program until on or about July 27, 2012, when she was found to have relapsed after testing  
8 positive and out of range for Cocaine. Respondent admitted to having used Cocaine at a party.  
9 On August 16, 2012, Respondent's random body fluid test was reported to be out of range.

10 d. Respondent entered the inpatient program for a 20 day period, commencing on  
11 August 20, 2012. She was discharged from the inpatient program on September 8, 2012. On  
12 September 26, 2012 and October 3, 2012, Respondent tested positive for Tramadol.

13 e. On October 11, 2012, Respondent attended an inpatient treatment at Action Family  
14 Counseling. She thereafter attended aftercare.

15 f. On November 1, 2012, Respondent was terminated from diversion and designated as  
16 a Public Risk, for failure to comply with the terms of the Recovery Terms and Condition  
17 Agreement by the Diversion Program. Such violations included positive drug tests, late or  
18 missing paperwork, missing pages from documents including Monthly Self Reports, and  
19 delinquent monthly Diversion Program Fees. Respondent has indicated that she intends to work  
20 as a salesperson for a pharmaceutical company, which will likely allow her access to prescription  
21 medications.

## 22 **SECOND CAUSE FOR DISCIPLINE**

### 23 **(Violations of Nursing Practice Act)**

24 16. Respondent is subject to disciplinary action under Business and Professions Code  
25 sections 2761, subdivision (d), in that Respondent violated provisions of the Nursing Practice  
26 Act, as described in paragraph 15, above.

27 ///

28 ///

1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct: Obtain/Possess Controlled Substance/Dangerous Drug)**

3 17. Respondent is subject to disciplinary action under section 2761, subdivision (a) as  
4 defined in section 2762, subdivision (a) of the Code in that Respondent used Cocaine a controlled  
5 substance and dangerous drug, without a medical prescription therefore. The conduct is described  
6 in more particularity in paragraph 15, subdivisions (a) and (c) incorporated by reference.

7 **PRAYER**

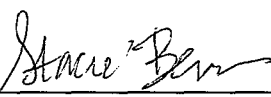
8 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
9 and that following the hearing, the Board of Registered Nursing issue a decision:

10 1. Revoking or suspending Registered Nurse License Number 614766, issued to Nicole  
11 Lynn Mays, aka Nicole Lynn Bautista

12 2. Ordering Nicole Lynn Mays to pay the Board of Registered Nursing the reasonable  
13 costs of the investigation and enforcement of this case, pursuant to Business and Professions  
14 Code section 125.3;

15 3. Taking such other and further action as deemed necessary and proper.

16  
17 DATED: APRIL 17, 2013

18 *for*   
19 LOUISE R. BAILEY, M.ED., RN  
20 Executive Officer  
21 Board of Registered Nursing  
22 Department of Consumer Affairs  
23 State of California  
24 Complainant

25 LA2012606673  
26 51256559.doc  
27  
28